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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

FOREMOST INVESTMENT
PROPERTIES, LLC,

Plaintiff and Appellant,

v.

GAP FUND, LLC,

Defendant and Respondent.

B215503

(Los Angeles County
Super. Ct. No. BC378522)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ann I. Jones, Judge. Affirmed.

Law Offices of Jody D. Angel, Jody D. Angel; DiJulio Law Group, R. David DiJulio, Michael M. Bergfeld and Tiffany Krog for Plaintiff and Appellant.

Loeb & Loeb, Edward D. Russell and Michael Black for Defendant and Respondent.

* * * * *

Plaintiff and appellant Foremost Investment Properties, LLC, contends that it was the victim of a fraud. It purchased real property that was later encumbered by a deed of trust recorded to secure a loan issued by defendant and respondent Gap Fund, LLC (Gap Fund). Appellant brought an action against those involved in the fraud and Gap Fund, generally seeking a judicial determination of its interest in the property. The trial court granted Gap Fund's motion for summary judgment, ruling that appellant was not entitled to relief because the undisputed evidence showed that Gap Fund was a bona fide encumbrancer; it recorded a deed of trust in good faith and without notice of either appellant's claims or any fraud.

We affirm. Gap Fund met its burden to show it was a bona fide encumbrancer and appellant offered no evidence to create a triable issue of fact as to whether a grant deed essential to the loan transaction was void or whether further inquiry by Gap Fund would have provided notice of the fraud.

FACTUAL AND PROCEDURAL BACKGROUND

The Gap Fund Loan.

In 2004, Countrywide Home Loans, Inc. (Countrywide) recorded two deeds of trust against the property located at 1370 Paseo Redondo in Burbank, California (Property), which at that time was owned by Hamlet Sardariani (Hamlet). At a nonjudicial foreclosure sale in March 2007, appellant acquired title to the Property, subject to one of the Countrywide deeds of trust. A trustee's deed upon sale was recorded in the official records at the Los Angeles County Recorder's Office (Recorder's Office) in April 2007 reflecting the sale.

Also in April 2007, Henrik Sardariani (Henrik) contacted Gap Fund, a private money lender, to obtain a refinance loan to be secured by the Property. Henrik represented to Gap Fund that he was the president of appellant as well as the president of SLK, Inc. (SLK), an entity he claimed was appellant's managing member. Gap Fund had no prior dealings with appellant, SLK, Hamlet or Henrik.

Gap Fund hired Security Union Title Insurance Company (Security Union) to handle the escrow and title insurance for the transaction. In May 2007, Gap Fund received a preliminary title report from Security Union showing that appellant held title to the Property; the Property remained encumbered by deed of trust in favor of Countrywide which secured a \$595,000 loan to prior owner Hamlet; and a notice of default had been filed with the Recorder's Office relating to the Countrywide deed of trust.

As part of the loan approval process, Gap Fund requested and received an appraisal of the Property, which determined the Property was occupied and appraised it at \$1.2 million. Gap Fund also requested and received a credit report on Henrik which listed the Property as one of his addresses as early as October 2002. The credit report listed several aliases for Henrik and contained a fraud alert. Gap Fund thereafter interviewed Henrik and he completed a uniform residential loan application on May 24, 2007. According to that application, Henrik had a monthly income of \$39,000 and monthly debts of \$12,529.

During the loan approval process, Henrik requested that the loan be vested in SLK and him. He provided a letter to Gap Fund that he signed purporting to authorize the loan to be vested in SLK.

On May 23, 2007, Henrik signed an interest only note (Note) between Gap Fund as lender and SLK and Henrik as borrowers, evidencing a Gap Fund loan in the amount of \$800,000. The following day, Henrik executed a grant deed (SLK grant deed) on behalf of SLK as appellant's managing member, which was notarized by a licensed notary public and evidenced appellant's conveyance of a fee simple interest in the Property to SLK. The same day, Henrik also executed a deed of trust (Gap Fund deed of trust) on behalf of SLK and himself, which was to be recorded upon closing of the loan transaction to secure payment under the Note. Security Union prepared amended escrow instructions showing SLK—not appellant—as the borrower. Henrik executed a declaration of nonowner occupancy indicating that he did not intend to make the Property his principal place of residence. Also on May 24, 2007, a substitution of trustee and full

reconveyance was recorded in the official records of the Recorder's Office, which purported to reconvey the outstanding Countrywide deed of trust.

The following day, Gap Fund received evidence of insurance on the Property, naming Gap Fund as the first mortgagee. Prior to the May 29, 2007 loan funding, Gap Fund received several documents, including: (1) the SLK grant deed; (2) correspondence from Countrywide to Hamlet confirming the trust deed reconveyance; (3) appellant's limited liability articles of incorporation dated May 18, 2007, signed by Henrik and showing him as the agent for service of process, and filed with the California Secretary of State on May 21, 2007; (4) a statement of information—also dated May 18, 2007, signed by Henrik and filed with the California Secretary of State on May 21, 2007—showing that SLK was appellant's managing member and Henrik was the chief executive officer; (5) appellant's application for an employer identification number dated May 21, 2007 and signed by Henrik as appellant's president; (6) appellant's operating agreement, signed by Henrik, indicating that appellant's managing member had the right to convey real property appellant owned; (7) SLK's articles of incorporation, filed with the Nevada Secretary of State on March 5, 1997, showing Henrik as SLK's sole director; (8) SLK's bylaws, showing that the director of SLK had the authority to mortgage real property it owned; (9) SLK's California annual minutes disclosure statement, signed by Henrik as president and secretary of SLK, showing the Property as the address for SLK in California, Henrik as the sole director of SLK and Henrik as SLK's president and secretary; and (10) SLK's Nevada annual list of officers, directors and resident agent for SLK, signed by Henrik and filed with the Nevada Secretary of State on May 11, 2007, showing Henrik as SLK's president, secretary, treasurer and director.

The transaction closed on May 29, 2007, at which time the \$800,000 loan funded and the SLK grant deed and the Gap Fund deed of trust were recorded in the official records of the Recorder's Office.

Following the Gap Fund loan, SLK further encumbered the Property in July 2007 by obtaining a \$500,000 loan from Ramin Mikail secured by a deed of trust on the

Property and a \$2.5 million loan from BITH, LLC, also purportedly secured by a deed of trust on the Property.

The Pleadings and Summary Judgment Motion.

In October 2007, appellant filed a complaint against Gap Fund, SLK, Henrik, Hamlet and others alleging causes of action for quiet title, cancellation of instruments, slander of title, fraudulent transfer, and fraud and deceit and seeking the imposition of a constructive trust and declaratory and injunctive relief. Gap Fund answered and moved for judgment on the pleadings. In response, appellant filed the operative first amended complaint (complaint) in February 2008, naming defendants Gap Fund, SLK, Henrik, Hamlet and Mikail and eliminating its cause of action for fraud and deceit. Gap Fund answered the complaint in March 2008.

Thereafter, Gap Fund moved for summary judgment and, alternatively, for summary adjudication. Gap Fund asserted that the undisputed evidence showed appellant was not entitled to relief because it was a bona fide encumbrancer of the Property, as it had recorded its deed in good faith, for valuable consideration and without actual or constructive knowledge of SLK's fraud in obtaining title to the Property. In support of the motion it submitted declarations and documents relating to the loan transaction.

Appellant opposed the motion on the grounds that the SLK grant deed was void and that there were triable issues of fact as to whether Gap Fund was a bona fide encumbrancer, given that it knew or should have known to conduct a further investigation in light of inconsistencies and omissions in the documents. Appellant offered the declaration of Peter Baer in support of its opposition, and Gap Fund filed evidentiary objections to the declaration and an exhibit attached thereto.

Following a January 23, 2009 hearing on the motion, the trial court issued a detailed ruling granting summary judgment. It reasoned the undisputed evidence showed that, having paid value for its lien, Gap Fund met its threshold burden to show it was a bona fide encumbrancer. Having met that burden, Gap Fund was entitled to a presumption that the lien was created in good faith and without notice of appellant's equitable claims. The trial court determined that appellant offered no evidence creating a

triable issue of fact sufficient to rebut this presumption. According to the trial court: “There are no facts adduced by [appellant] that support even a reasonable inference that Gap Fund had knowledge of any facts that would have prompted a reasonable person to further inquire about Henrik’s assertion that SLK was the managing member of [appellant] and that he was president of SLK, with the authority to execute the SLK Grant Deed.” On the basis of the undisputed evidence, the trial court found it “uncontroverted that prior to the closing of escrow on the loan transaction and recording of the Gap Fund Trust Deed, the Gap Fund had no notice or knowledge or allegations that (1) SLK was not the managing member of [appellant]; (2) Henrik was not the president of SLK or [appellant]; (3) Henrik did not have the authority to execute the SLK Grant Deed; (4) SLK did not have the authority to execute the SLK Grant Deed; and (5) the SLK Grant Deed was improperly recorded in the Official Records of the Recorder’s Office of Los Angeles County. Nor did Gap Fund have any notice or knowledge that any of the documents submitted by Henrik were unauthorized to be filed with the California and Nevada Secretary of State.”

The trial court rejected appellant’s assertion that triable issues of material fact existed as to whether Gap Fund should have conducted further inquiry, explaining that Gap Fund was under no duty to conduct the level of exhaustive investigation suggested by appellant. It ruled: “The uncontroverted evidence fails to support plaintiff’s characterization of this loan transaction as ‘suspicious.’ Quite the contrary, there was nothing in the condition of the property, the valuation of the property, the filed public records or the information submitted by Henrik that would have prompted a reasonable person to make further inquiry. Gap Fund relied on public records to corroborate Henrik’s assertion that SLK had properly obtained title to the property from [appellant]. There is no legal requirement that a *bona fide* encumbrancer do more. [Citation.]” It also rejected appellant’s assertion that the Gap Fund trust deed was void, explaining that a grant deed fraudulently obtained by a grantee against a grantor cannot be set aside as against a bona fide encumbrancer. It concluded that Gap Fund’s status as a bona fide encumbrancer barred all causes of action alleged in the complaint.

The trial court issued a separate order sustaining Gap Fund's objections to the Baer declaration and to the attached exhibit.

In March 2009 the trial court entered judgment in favor of Gap Fund. This appeal followed.

DISCUSSION

Appellant contends that the trial court erred in granting summary judgment for three independent reasons. First, it argues there was a triable issue of fact as to whether the SLK grant deed was void—as opposed to voidable—thereby negating Gap Fund's status as a bona fide encumbrancer. Second, it argues there was a triable issue of fact as to whether inconsistencies in the documents that Gap Fund reviewed imposed on it a duty to make further inquiries about Henrik's authority. Finally, it argues that a subsequent default judgment against SLK, Hamlet and Henrik cancelling the SLK grant deed created an inconsistency in the judgments amounting to a triable issue of fact. We find no merit to appellant's arguments.

I. Standard of Review.

We review a grant of summary judgment de novo, considering “‘all of the evidence set forth in the [supporting and opposition] papers, except that to which objections have been made and sustained by the court, and all [uncontradicted] inferences reasonably deducible from the evidence.’” (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 612.) “In independently reviewing a motion for summary judgment, we apply the same three-step analysis used by the superior court. We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent's claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue.” (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 261.) If there is no triable issue of material fact, “we affirm the summary judgment if it is correct on any legal ground applicable to this case, whether that ground was the legal theory adopted by

the trial court or not, and whether it was raised by defendant in the trial court or first addressed on appeal.” (*Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1071.)

The general rule is that summary judgment is appropriate where “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .” (Code Civ. Proc., § 437c, subd. (c).) A defendant “moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving defendant may meet this burden either by showing that one or more elements of a cause of action cannot be established or by showing that there is a complete defense thereto. (Code Civ. Proc., § 437c, subd. (o)(2); *Aguilar v. Atlantic Richfield Co.*, *supra*, at p. 850.) “[A]ll that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action . . . [;] the defendant need not himself conclusively negate any such element” [Citation.]” (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894.) Once the moving party’s burden is met, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. (*Silva v. Lucky Stores, Inc.*, *supra*, 65 Cal.App.4th at p. 261.) ““When opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork.”” [Citation.]” (*Mills v. U.S. Bank*, *supra*, at p. 894.)

Although we independently review a grant of summary judgment, we review the trial court’s evidentiary rulings for an abuse of discretion. (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 679; *Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694.) But in order to demonstrate an abuse of discretion, an appellant must affirmatively challenge the evidentiary rulings on appeal. That is, the asserted erroneous evidentiary rulings must be identified “as a distinct assignment of error” and be supported by analysis and citation to authority. (*Roe v. McDonald’s Corp.* (2005) 129 Cal.App.4th 1107, 1114.) Where, as here, an appellant does not challenge the trial court’s sustaining objections to evidence offered in opposition to a summary

judgment motion, “any issues concerning the correctness of the trial court’s evidentiary rulings have been waived. [Citations.] We therefore consider all such evidence to have been properly excluded. [Citation.]” (*Lopez v. Baca* (2002) 98 Cal.App.4th 1008, 1014–1015.)

II. The Undisputed Evidence Established That Gap Fund Was a Bona Fide Encumbrancer Entitled to Summary Judgment.

A. Gap Fund Met Its Burden to Show It Was a Bona Fide Encumbrancer.

As we explained in *First Fidelity Thrift & Loan Assn. v. Alliance Bank* (1998) 60 Cal.App.4th 1433, 1440–1441 (*First Fidelity*): “A good faith encumbrancer for value who first records takes its interest in the real property free and clear of unrecorded interests. [Citations.] ‘An encumbrancer in good faith and for value means a person who has taken or purchased a lien, or perhaps merely the means of obtaining one, and who has parted with something of value in consideration thereof. [Citation.] . . . [A] “good faith” encumbrancer is one who acts *without knowledge or notice* of competing liens on the subject property. [Citations.]’” (Accord, *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1251; *Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356, 364.)

Generally, the burden of proof rests with the party claiming bona fide encumbrancer status to present evidence that it acquired an interest in the property without notice of a prior competing interest. (*First Fidelity, supra*, 60 Cal.App.4th at p. 1442; *Gates Rubber Co. v. Ulman, supra*, 214 Cal.App.3d at p. 366, fn. 6.) The determination of bona fide encumbrancer status is based on the circumstances that existed at the time of the transaction; later acquired information does not affect the determination. (*Melendrez v. D & I Investment, Inc., supra*, 127 Cal.App.4th at p. 1254.)

Here, the undisputed evidence showed Gap Fund made its loan without knowledge of appellant’s asserted interest. The evidence showed that shortly after appellant acquired the Property, Henrik contacted Gap Fund to secure a refinance loan. Henrik told Gap Fund that he was the president of appellant as well as the president of SLK, appellant’s managing member. Before the loan funded, Gap Fund received several

documents that appeared to support Henrik's assertions about his relationship to and role with appellant. Specifically, Gap Fund received appellant's limited liability articles of incorporation, filed with the California Secretary of State on May 21, 2007 and signed by Henrik, showing him as appellant's agent for service of process. It also received a statement of information, filed with the California Secretary of State on May 21, 2007 and signed by Henrik, showing that SLK was appellant's managing member and Henrik was appellant's chief executive officer.

Gap Fund received additional documents that provided information about SLK and its authority to act on appellant's behalf. These included an operating agreement between appellant and its members, signed by Henrik, indicating that appellant's managing member had the right to convey real property owned by appellant; SLK's articles of incorporation, filed with the Nevada Secretary of State on March 5, 1997, showing Henrik as SLK's sole director; SLK's bylaws, showing that SLK's director had the authority to mortgage real property it owned; and SLK's California annual minutes disclosure statement, signed by Henrik, showing the Property as the address for SLK in California, Henrik as the sole director of SLK and Henrik as SLK's president and secretary. Gap Fund also received SLK's Nevada annual list of officers, directors and resident agent for SLK, signed by Henrik and filed with the Nevada Secretary of State on May 11, 2007, showing Henrik as SLK's president, secretary, treasurer and director.

Subsequent to the execution of these documents, Henrik executed the SLK grant deed, which was notarized by a licensed notary public and evidenced appellant's conveyance of a fee simple interest in the Property to SLK. Consistent with SLK's role as appellant's managing member, the SLK grant deed was stamped with the notation: "THE GRANTOR AND GRANTEE IN THIS CONVEYANCE ARE COMPRISED OF THE SAME PARTIES WHO CONTINUE TO HOLD THE SAME PROPORTIONATE INTEREST IN THE PROPERTY R & T 11923(d)."¹ This transfer caused Security

¹ The stamp on the deed references a statute, former Revenue and Taxation Code section 11923, subdivision (d). Now renumbered as section 11923, subdivision (a)(4),

Union to prepare amended escrow instructions showing SLK as the borrower. Henrik thereafter executed the Gap Fund deed of trust on behalf of SLK and himself to secure payment of the Gap Fund loan. There was no evidence in the additional documents that Gap Fund reviewed—including the preliminary title report, appraisal and reconveyance of the Countrywide deed of trust—to suggest that the relationship between appellant, SLK and Henrik was not as represented in the documents recorded in the Recorder’s Office and filed with the California and Nevada Secretaries of State.

In light of this evidence, we are guided by our prior decision in *First Fidelity, supra*, 60 Cal.App.4th 1433, in which we affirmed an order granting summary judgment in favor of lender Alliance Bank. There, a borrower obtained a loan from First Fidelity secured by a deed of trust encumbering both the borrower’s commercial and residential property. When the borrower made a capital reduction payment, the trustee of the deed of trust erroneously reconveyed the commercial property instead of the residential property as instructed. (*Id.* at p. 1436.) Four months later, the borrower applied for a loan from Alliance Bank, indicating on his financial statement that the commercial property remained encumbered. While the Alliance Bank application was pending, the borrower obtained an additional loan from a third party bank secured by a deed of trust against the commercial property. (*Id.* at pp. 1436–1437.)

Before funding the loan, Alliance observed that there was a discrepancy between the borrower’s financial statement and the title report. The borrower told Alliance that at some point he had refinanced one of his properties and it had been “released.” (*First Fidelity, supra*, 60 Cal.App.4th at p. 1437.) The third party bank confirmed that the commercial property was not encumbered by a First Fidelity deed of trust. (*Id.* at pp. 1437–1438.) Approximately two years after Alliance funded its loan, First Fidelity

this provision is part of the statutory scheme governing the documentary transfer tax. (Stats. 2006, ch. 538, § 620.) The statute provides an exemption to the real estate transfer taxes specified in section 11911, subdivision (a) and is applicable “[w]hereby a mere change in identity, form, or place of organization is effected.” (Rev. & Tax. Code, § 11923, subd. (a)(4).)

realized its mistake. It ultimately obtained a judgment against the borrower reinstating its deed of trust, though junior to Alliance's deed of trust. (*Id.* at p. 1439.) Ultimately, both loans went into default and, following a series of proceedings not pertinent here, First Fidelity and Alliance both moved for summary judgment. While First Fidelity maintained that Alliance failed to thoroughly investigate First Fidelity's interest, Alliance asserted it had neither actual nor constructive notice of First Fidelity's encumbrance. (*Id.* at p. 1440.)

We affirmed the grant of summary judgment in favor of Alliance, reasoning the undisputed evidence showed that Alliance met its burden to show it had no knowledge of First Fidelity's claim on the commercial property, including no knowledge that the reconveyance occurred in error. (*First Fidelity, supra*, 60 Cal.App.4th at p. 1442.) We further found that Alliance had no constructive notice of the erroneous reconveyance, as the information it learned during the course of its investigation was consistent with normal practice. (*Id.* at p. 1445.) The evidence here corresponds with the evidence in *First Fidelity*, as the recorded and corporate documents that Gap Fund received during the transaction were consistent with Henrik's representations as to how appellant intended to secure the loan. To corroborate Henrik's request—purportedly made on appellant's behalf—that the loan be vested in SLK, Gap Fund received documents showing that SLK was appellant's managing member, SLK had the power to transact business on appellant's behalf and the SLK grant deed reflected a transfer between the same parties not subject to documentary transfer tax. The undisputed evidence showed that Gap Fund had no knowledge that SLK's role with appellant was not as represented, or that appellant's interest in the Property was inconsistent with the interests asserted by SLK and Henrik.

B. Appellant Failed to Show the Existence of a Triable Issue of Material Fact.

1. Appellant offered no admissible evidence to support its argument that the SLK grant deed is void.

Appellant maintains there was a triable issue of fact as to Gap Fund's status as a bona fide encumbrancer because, contrary to the trial court's determination, the SLK grant deed was void rather than voidable. The court in *Schiavon v. Arnaudo Brothers* (2000) 84 Cal.App.4th 374, 378, explained the effect of void and voidable deeds on an encumbrancer: "Whether defendant's status as a bona fide purchaser defeats plaintiffs' claim under the deed of trust depends on whether the trustee's reconveyance of plaintiffs' deed of trust was void or voidable. If the reconveyance was void, it would have no effect even against a subsequent bona fide purchaser. [Citations.] If the reconveyance was voidable, however, it may have been subject to cancellation and rescission as against the trustee, but could be relied upon by a subsequent bona fide purchaser for value such as defendant. [Citation.]" The court further explained the difference between void and voidable deeds: "A deed is void if the grantor's signature is forged or if the grantor is unaware of the nature of what he or she is signing. [Citation.] A voidable deed, on the other hand, is one where the grantor is aware of what he or she is executing, but has been induced to do so through fraudulent misrepresentations. [Citation.] The same rules apply to the reconveyance of the property interest under a deed of trust as to the conveyance of property by grant deed. [Citation.]" (*Id.* at pp. 378–379.)

The trial court ruled that, at best, the SLK grant deed was voidable because it was obtained by defrauding appellant as the grantor. But if the SLK grant deed was in fact executed by Henrik on SLK's behalf, and SLK in fact had no relationship to appellant, then the deed would be void. (See *Wutzke v. Bill Reid Painting Service, Inc.* (1984) 151 Cal.App.3d 36, 43 [recorded deed of reconveyance which falsely indicated that escrow company had received instructions from seller to issue because all sums under the deed of trust had been paid held void, meaning that subsequent encumbrancer's interest was subordinate to seller's valid deed of trust].) The circumstances alleged by appellant are

different than those in the cases relied on by the trial court, where those who otherwise had the power and authority to execute or reconvey trust deeds were fraudulently induced to take action. For example, in *Schiavon v. Arnaudo Brothers, supra*, 84 Cal.App.4th at page 377, a fraudulently executed request for reconveyance led a trustee, unaware of the fraud, to execute a full reconveyance. Because the reconveyance was procured by fraud, though issued by one who was authorized to reconvey, the court determined that a subsequent purchaser took the property free of the improperly reconveyed deed of trust. (*Id.* at p. 381.)

Notwithstanding our conclusion that the facts as argued by appellant appear to indicate that the SLK grant deed was void, we find no basis to disturb the judgment. (See, e.g., *Dictor v. David & Simon, Inc.* (2003) 106 Cal.App.4th 238, 245 [appellate court reviews the trial court's ruling on summary judgment, not its stated reasons therefor].) Though appellant has consistently argued that the SLK grant deed should be declared void, it proffered no admissible evidence in opposition to the summary judgment motion to support its argument. In connection with its opposition, appellant submitted the declaration of its authorized agent, Peter Baer, who averred, among other things, that at no time was SLK appellant's managing member, nor was Henrik or SLK in any way associated with appellant. Gap Fund objected to the declaration on multiple grounds, and the trial court sustained all objections. Appellant has not challenged the evidentiary rulings on appeal. Consequently, we must "consider all such evidence to have been properly excluded." (*Lopez v. Baca, supra*, 98 Cal.App.4th at pp. 1014–1015 [where party fails to "challenge the trial court's ruling sustaining . . . objections to certain evidence offered in opposition to the summary judgment motion," "any issues concerning the correctness of the trial court's evidentiary rulings have been waived"].) We therefore may not rely on this inadmissible evidence in our evaluation of the summary judgment motion. (See *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 529 ["A motion for summary judgment 'must be decided upon admissible evidence'"].)

Because there was no evidence to create a triable issue of fact as to whether the SLK grant deed was void because SLK had no authority to execute it, the trial court correctly ruled that Gap Fund was a bona fide encumbrancer.

2. There was no evidence creating a triable issue of fact as to whether Gap Fund had constructive notice that Henrik and SLK were not authorized to act on appellant's behalf.

Alternatively, appellant argues it met its burden to demonstrate that a triable issue of fact existed as to whether Gap Fund had constructive notice of SLK and Henrik's lack of authority because it failed to conduct a reasonable inquiry. A party claiming status as a good faith encumbrancer must act without notice or knowledge of competing rights to the property. (E.g., *Triple A Management Co. v. Frisone* (1999) 69 Cal.App.4th 520, 530; see also *Gates Rubber Co. v. Ulman*, *supra*, 214 Cal.App.3d at p. 364 [“The absence of notice is an essential requirement in order that one may be regarded as a bona fide purchaser”].) Certain principles guide the determination of whether a party has acted without notice: “First, the subsequent encumbrancer is permitted only to rely on the recorded state of title as that state of title objectively presents itself: the subsequent encumbrancer is not entitled to view the record either through rose-colored glasses or with blinders on. That is, he is not entitled to interpret ambiguities in his own favor nor is he entitled to ignore reasonable warning signs that appear in the recorded documents. Second, a lender is not entitled to ignore information that comes to him from *outside* the recorded chain of title, to the extent such information puts him on notice of information that reasonably brings into question the state of title reflected in the recorded chain of title. [Citation.]” (*Triple A Management Co. v. Frisone*, *supra*, 69 Cal.App.4th at pp. 530–531.)

According to appellant, Gap Fund ignored specific warning signs, comprised of the identification of appellant as “Formost” instead of “Foremost” on the articles of incorporation and the handwritten entry of appellant on the operating agreement that can be construed either as “FORE MOST” or “FOREMOST.” Appellant further contends that, particularly in light of these ambiguities, Gap Fund's investigation was inadequate,

as Gap Fund never contacted appellant directly, never contacted Countrywide to determine the status of the outstanding deed of trust, and never confirmed the information in Henrik’s loan application.

The trial court rejected these arguments, as do we. It reasoned that the inconsistencies in the documents became significant only in hindsight, and that the undisputed evidence showed that Gap Fund conducted a reasonable investigation in light of the information presented to it. It explained that the law does not require an encumbrancer to conduct the type of extensive investigation contemplated by appellant. Rather, it concluded that it was reasonable for Gap Fund to rely on public records to corroborate Henrik’s representations concerning his authority with appellant. In particular, the trial court observed that the statement of information filed on appellant’s behalf and in accordance with Corporations Code section 17060—in which the name “Foremost” was not or could not be construed to be misspelled—indicated that Henrik was appellant’s chief executive officer and SLK was its managing member. The law imposes no duty on a party dealing with a limited liability company to inquire about the contents of that statement.² (Corp. Code, § 17060, subd. (f); cf. *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 780 [where question was adequacy of service of process, “[p]laintiff’s counsel could reasonably rely on a list of officers prepared by defendant corporation which bore no indicia of error or mistake”]; because in the overwhelming majority of cases corporate documents filed with the Secretary of State

² In addition, Corporations Code section 17060, subdivision (d) provides that a limited liability company must file a current statement of information when its agent for service of process changes and that such statement supersedes any previously filed statement. Subdivision (e), in turn, authorizes the Secretary of State to destroy any previously-filed statement. Read together with subdivision (f), which states that “[t]his section shall not be construed to place any person dealing with the limited liability company on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section,” these provisions negate appellant’s further argument that Gap Fund had constructive notice of documents of which we have taken judicial notice showing that appellant’s agent for service of process was not SLK. (Corp. Code, § 17060, subd. (f).)

accurately identify corporate officers, “further investigation by counsel would only incur a waste of time and money”].)

Again, *First Fidelity, supra*, 60 Cal.App.4th 1433 is instructive. There, First Fidelity asserted it met its burden to establish a triable issue of fact as to whether Alliance was a bona fide encumbrancer by showing that there was an inconsistency between the borrower’s financial statement and the title report, and arguing that Alliance made inadequate inquiries to resolve that inconsistency. Relying on the general principle that “[t]he inquiry legally required, however, is only a reasonable inquiry, not an exhaustive one,” the court determined that Alliance discharged its duty to inquire once the discrepancy had been explained in a manner consistent with normal practice. (*Id.* at p. 1445.) That is, once Alliance learned that the third party bank held an encumbrance against the commercial property, “[i]t was a reasonable deduction from this information that First Fidelity’s deed of trust against the commercial property had been reconveyed, which in fact was correct. No evidence was presented to the effect that Alliance had reason to suspect that the unusual had occurred: that First Fidelity had reconveyed by mistake.” (*Id.* at p. 1444.)

Here, too, we cannot conclude that the discrepancies in the documents—one and arguably two typographical errors—gave Gap Fund reason to suspect that the entire transaction was a sham. Rather, on the basis of the public documents Gap Fund received, it was reasonable for it to conclude that SLK was appellant’s managing member who had received title to the Property and had the power and authority to encumber it. The trial court accurately summarized the state of the undisputed evidence: “As established by the uncontroverted evidence, Gap Fund did conduct an investigation and obtained recorded documents and other public records that showed that Henrik had valid title to the property to be encumbered, that the entities conducting the transaction were registered and in good standing in both California and Nevada, and that Henrik, the individual involved in the transaction, was authorized by the publicly filed records to conduct the business at issue. It is entirely reasonable for a *bona fide* purchaser to rely on the public records to determine if a borrower is authorized to make a conveyance, and to receive title free and

clear of the equitable lien if he or she does not have knowledge or notice that the borrower was unauthorized to convey.” (Accord, *March v. Pantaleo* (1935) 4 Cal.2d 242, 244 [encumbrancer had no duty to make further inquiries where property owner indicated he had previously borrowed money from another individual and was unsure how or whether he had repaid it, and recorded documents showed a prior deed of trust and reconveyance but failed to reflect an unrecorded deed of trust securing a second loan from the same individual]; *Gates Rubber Co. v. Ulman, supra*, 214 Cal.App.3d at p. 365 [intending purchaser has no duty to inquire of tenant as to any rights it may possess by virtue of an unrecorded document where the “tenant’s possession is consistent with the terms of a recorded lease which does not refer to an additional unrecorded option to purchase, and there are no circumstances indicating the tenant has additional rights”].)

Because the undisputed evidence showed that Gap Fund had neither knowledge nor notice that appellant’s interest in the Property was contrary to that represented by Henrik, it established that it was a good faith encumbrancer entitled to judgment on all causes of action asserted by appellant.

3. The subsequent judgment cancelling the SLK grant deed does not affect Gap Fund’s bona fide encumbrancer status.

In its final challenge, appellant contends that summary judgment in favor of Gap Fund is inconsistent with the default judgment subsequently entered in September 2009 against Henrik, Hamlet and SLK.³ The default judgment ordered that a judgment of quiet title be entered in favor of appellant for the Property and further ordered the SLK grant deed cancelled and expunged because it was unauthorized and fraudulently procured. According to appellant, Gap Fund should be bound by the default judgment.

Appellant, however, misconstrues the nature of the rights received by a bona fide encumbrancer. As explained in *Reiner v. Danial* (1989) 211 Cal.App.3d 682, 689–690, an encumbrancer who pays valuable consideration for an interest in real property in good

³ We granted appellant’s request to augment the record to include the subsequent default judgment.

faith and who records the interest receives that interest free and clear of all prior unknown and unrecorded claims in the property. Because of lack of knowledge or notice is essential to obtaining status as a bona fide encumbrancer, only a party's knowledge of interests at the time of the encumbrance is material and any later acquired knowledge is irrelevant. (*Id.* at p. 690 [agreement not of record and unknown to purchaser at the time of purchase held irrelevant to determination of bona fide purchaser status]; accord, *Melendrez v. D & I Investment, Inc.*, *supra*, 127 Cal.App.4th at p. 1254.) Thus, because the default judgment had not yet been entered at the time of Gap Fund's encumbrance, it is irrelevant to the determination of Gap Fund's status as a bona fide encumbrancer.

Moreover, contrary to appellant's contention, the default judgment (which is now final) did not hold the SLK grant deed void from its inception.⁴ Rather, the default judgment declared that the SLK grant deed "was/is unauthorized and fraudulently executed by Defendants and is hereby ordered cancelled and expunged from all records." The default judgment is therefore akin to that in *Fallon v. Triangle Management Services, Inc.* (1985) 169 Cal.App.3d 1103. There, lenders made a loan to a real property purchaser and recorded a deed of trust on the property securing that loan. The seller then obtained a default judgment declaring that the deed from him to the purchaser was "void and cancelled" and that the purchaser had acquired no right or interest under the deed. (*Id.* at p. 1105.) In an action by subsequent purchasers of the property, in which they contended that because the deed was declared void the initial purchaser had no title and could not have encumbered the property, the court ruled that the lenders were bona fide encumbrancers. Relying on the principle that "[u]ntil a voidable deed is declared void it is fully operative," the court explained that the default judgment "can only be considered a declaration that the deed from [seller] to [initial purchaser] was void at the time the judgment was entered but not at the time the deed was executed. A deed obtained by fraud, though voidable, is generally not void. [Citation.] It is conceded that the

⁴ Because the default judgment is final and not a part of this appeal, our prior observation that the SLK grant deed would appear to be void if created as postulated by appellant has no bearing on the effect of the default judgment here.

respondents were bona fide encumbrancers for value without notice. The deed from [seller] to [initial purchaser] was not void when executed and recorded.” (*Id.* at p. 1106.)

Here, likewise, the default judgment declaring the SLK grant deed cancelled as a result of its fraudulent procurement had no effect on the trial court’s prior determination that Gap Fund was a bona fide encumbrancer.

DISPOSITION

The judgment is affirmed. Gap Fund is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ